IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 21974 of 2005(N)

PETITIONER:

WADAKANCHERRY BLOCK MULTI-PURPOSE
CO-OPERATIVE SOCIETY LTD., REGN. NO.1125,
WADAKANCHERY P.O., THRISSUR.
REPRESENTED BY ITS PRESIDENT, E.K.DIVAKARAN.

BY ADV. SRI.V.GIRI

RESPONDENTS:

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1. DISTRICT MEDICAL OFFICER(HEALTH),
THRISSUR.

2. SUPERINTENDENT, THALAPPILY TALUK
GOVERNMENT HOSPITAL, OOTTUPARA,
WADAKKANCHERRY P.O., THRISSUR.

3. HOSPITAL DEVELOPMENT COMMITTEE,
THALAPPILLY TALUK GOVERNMENT HOSPITAL,
REPRESENTED BY ITS CONVENER (SUPERINTENDENT,
THALAPPILLY TALUK GOVERNMENT HOSPITAL),
WADAKKANCHERY P.O., THRISSUR.

4. WADAKANCHERY BLOCK PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
WADAKANCHERY.

BY GOVERNMENT PLEADER - SMT.R.BINDU
SRI.M.G.KARTHIKEYAN
C.C.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 21974/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF THE RESOLUTION NO.7 DATED 29/6/2005 OF THE WADAKANCHERY BLOCK PANCHAYAT.

EXT.P2 COPY OF THE COMMUNICATION DATED 16/06/2005 OF THE DISTRICT MEDICAL OFFICER (HEALTH), THRISSUR TO THE SUPERINTENDENT OF TALUK HOSPITAL, WADAKANCHERY.

EXT.P3 COPY OF THE COMMUNICATIOND DATED 27/06/2005 ISSUED BY THE PETITIONER TO THE SUPERINTENDENT OF TALUK HOSPITAL, WADAKANCHERY.

EXT.P4 COPY OF THE RECEIPT ISSUED BY THE PETITIONER IN FAVOUR OF THE SUPREINTENDENT, TALUK HOSPITAL, WADAKANCHERY DATED 02/07/2005.

EXT.P5 COPY OF THE COMMUNCIATION DATED 04/07/2005 ISSUED BY THE SUPERINTENDENT OF THE TALUK HOSPITAL, WADAKANCHERY TO THE DISTRICT MEDICAL OFFICER (HEALTH), THRISSUR.

EXT.P6 COPY OF THE COMMUNICATION ISSUED BY THE SUPERINTENDENT OF THE TALUK HOSPITAL, WADAKANCHERY DATED 04/07/2005 TO THE SECRETARY WADAKANCEHRY GRAMA PANCHAYAT.

EXT.P7 COPY OF THE ORDER BEARING NO.C.65/2005 DATED 16/07/2005 ISSUED BY THE SUPERINTENDENT, TALUK HOSPITAL, WADAKANCHERY TO THE PETITIONER.

EXT.P8 COPY OF THE RESOLUTION NO.1 DATED 17/06/2005 OF THE WADAKANCHERY BLOCK PANCHAYAT..

EXT.P9 COPY OF THE ORDER DATED 23/07/2005 OF THE REGISTRAR OF STATE CO-OPERATIVE SOCIETY.

EXT.P10 COPY OF DECISION TAKEN BY THE 4TH RESPONDENT ON 26/11/2005

RESPONDENT'S EXHIBITS

EXT.R4(b) COPY OF THE ORDER DATED 20/12/2004 OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES.

// TRUE COPY//

PA TO JUDGE.

jg

S. SIRI JAGAN, J.

W.P. (C) No. 21974 OF 2005 N

Dated this the 15th day of December, 2006

J U D G M E N T

Petitioner is a co-operative Society. The 4th respondent Block Panchayat constructed a single room building in the premises of the Talappilly Taluk Government Hospital with the intention of housing a medical store there. It appears that the petitioner Society made an application before the Block Panchayat for permitting them to start the Neethi Medical Store in that building. By Ext.P1 resolution, the Panchayat resolved to permit the petitioner to start the Neethi Medical Store in that building. This is evidenced by Exts.P1 and P2. According to the petitioner, respondents 1 to 3 also granted necessary approval for the petitioner to start the medical store. The petitioner is stated to have spent considerable amounts for carpentry work inside the building for making the building suitable for the medical store. According to him, the amounts spent by him comes to more than Rs.40,000/-. While so, the Superintendent of the Taluk Hospital issued Ext.P7 intimation to the petitioner since in respect of the Neethi Medical Store, disputes are pending between various organizations. It is apprehended that there is likelihood of agitations inside the hospital compound, which would be against the interest of the hospital itself. The petitioner was directed to stop further activities for starting the medical store. The 4th respondent

Panchayat also resolved by Ext.P8 resolution to keep further proceedings regarding start of the medical store pending till a fresh decision is taken after appropriate deliberations of the Panchayat committee. The petitioner originally challenged Exts.P7 and P8 in the writ petition. Subsequently, by interim order dated 5.10.05, this court directed the Panchayat to take a final decision in the matter. Pursuant thereto, the Panchayat took a resolution, Ext.P10, wherein it was held that the earlier decision was taken without proper deliberations on the subject. Therefore, the earlier decision was cancelled and it was decided to allot the building only after the construction of the building is completely over, that too after inviting applications for allotment in accordance with law. The petitioner has amended the writ petition challenging Ext.P10 order also. Counter affidavits have been filed by the 4th respondent Panchayat, 1st respondent Medical Officer as also a statement on behalf of respondents 2 and 3. It appears that all the respondents are now against the petitioner in allotting the building to the petitioner.

2. I have heard the counsel for the petitioner as also the counsel for the respondents.

3. There are disputes as to whether the petitioner has been given possession of the building and as to whether the 4th respondent has given possession of the building to the Taluk Hospital etc. However, I do not think it necessary to go into all these questions

because admittedly before passing Exts.P1 and P2, there was no process of inviting applications from intending persons for allotment of the building in question. The building having been constructed by the Panchayat, which comes under the definition of State., their actions will have to be tested in the light of Articles 14 and 16 of the Constitution of India. The petitioner does not have an exclusive right to get allotment of the building, without being selected after a process of inviting applications from the public for such allotment. Otherwise clearly the allotment of the building to the petitioner either by the Panchayat or by the DMO or by the Government would be totally violative of the constitutional mandate under Articles 14 and 16 of the Constitution of India. For that reason alone, the petitioner is not entitled to succeed in this writ petition. I further make it clear that none of the respondents or the Government shall take any steps to allot the building to anybody except through a process of inviting applications or tenders for allotment of the building. The writ petition is therefore dismissed. If the petitioner has any claim for damages against the Block Panchayat, it is for him to take recourse to appropriate remedies available to him under law, if he is so entitled to.

(S. SIRI JAGAN, JUDGE)

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